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Case No COMP/M.3576 - ECT / PONL / EUROMAX

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 22/12/2004

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2004

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: **Case No COMP/M.3576 – ECT/PONL/Euromax**
Notification of 17/11/2004 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 17/11/2004, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertakings Europe Container Terminals B.V. ("ECT") and P&O Nedlloyd B.V. ("PONL"), acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking Euromax.

2. After examination of the notification, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. ECT is a Dutch company which provides container stevedoring services in the port of Rotterdam. ECT is part of the Hutchison Whampoa Group ("Hutchison", Hong Kong) which is active inter alia in telecommunications, retail, energy, property and port services world-wide. In Europe, Hutchison operates deep-sea container terminals in the ports of Rotterdam, Felixstowe and Thamesport.

1 OJ L 24, 29.1.2004 p. 1.

4. PONL is a Dutch provider of containerised liner shipping services. It belongs to Royal P&O Nedlloyd N.V. ("Royal Nedlloyd", The Netherlands), which is a holding company with interests in containerised liner shipping services world-wide and air transport services. In Europe, PONL has interests in the port of Cagliari (Italy) and holds a 25% non-controlling share in the Antwerp Gateway, operational in 2005. [… *further explanation on voting rights]*.

5. PONL was created in 1996 as joint venture between Royal Nedlloyd and The Peninsular and Oriental Steam Navigation Company ("P&O")[2]. In spring 2004 Royal Nedlloyd acquired P&O's 50% share in PONL, thus holding 100% in PONL, and P&O received as compensation cash and a 25% share in Royal Nedlloyd. The transaction was approved by Commission decision of 29 March 2004[3].

6. Euromax will be a joint venture between PONL and ECT that will develop and operate a further container terminal to be constructed in the port of Rotterdam. The terminal will start its operation in 2008, with a capacity of […] million TEU which will rise to […] million in 2010.

II. THE OPERATION

7. ECT and PONL intend to enter into a co-operation agreement for the construction, development and operation of the Euromax terminal. To give effect to the co-operation, the parties will establish a new company called Euromax Beheer B.V. This company will become the general partner and ECT and PONL will become the limited partners of a limited partnership under Dutch law (*commanditaire vennootschap*), Euromax Terminal C.V. The objects of Euromax Terminal C.V. will be to develop, built and operate the Euromax terminal. Euromax Beheer B.V. and Euromax Terminal C.V. will be jointly referred to as "Euromax". Neither ECT nor PONL will transfer any assets or business divisions to Euromax. The land and the infrastructure of the Euromax terminal will be rented from the Port of Rotterdam by way of a long-term lease contract. Euromax will acquire all container handling equipment as well as information and communication technology.

8. The business rationale of the transaction is to further develop the parties' current supplier/customer relationship. At present ECT already handles PONL's volumes, as well those of its Grand Alliance partners, in the Port of Rotterdam in two different terminals, Delta and Home. [… *further explanation of parties*].

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2 See COMP/M.831 – P&O/Royal Nedlloyd.

3 COMP/M.3379 – P&O/Royal Nedlloyd/P&O Nedlloyd. The decision of 29 March 2004 contains the statement that on the basis of the information available to the Commission at the time of the decision and considering the specific circumstances and contractual arrangements of the case, there are not sufficient elements to establish that the acquisition of 25% by P&O in Royal Nedlloyd will give rise to a concentration under the Merger Regulation. There are no new elements which might change the analysis. Consequently, it must be assumed that P&O, which has interests in the ports of Le Havre (joint venture), Southampton (51%), in a terminal operator in Tilbury (34%), in the Antwerp Gateway (67.5%) and in the port of Marseille (joint venture), has no controlling influence on PONL. P&O's container terminal activities can thus not be added to the parties' activities when examining their market power.

III. CONCENTRATION

9. Euromax will be jointly controlled by the parties. ECT and PONL will each hold a 50% share in Euromax Beheer B.V. Both shareholders have veto rights as regards strategic decisions taken in the Supervisory Board of Euromax Beheer B.V. Euromax Beheer B.V. is therefore jointly controlled by the parties. ECT and PONL will contribute equally to the capital of Euromax Terminal C.V., which will be managed by Euromax Beheer B.V. Consequently, Euromax Terminal C.V. is also jointly controlled by the parties.

10. Euromax will have a management dedicated to its day-to-day business, access to sufficient resources and is intended to operate on a lasting basis. Nevertheless, the parties put forward that the JV would not be full-function. Virtually all of Euromax' capacity […]% would be dedicated to PONL […]%[4] and its […] partners […]%. Euromax would thus [… *summary*]. These companies should be seen as "captive customers" and Euromax would therefore not play an active role on the market. Furthermore, Euromax would lack managerial autonomy because [… *reasons*]. In addition, the Euromax management would have only a limited freedom to decide on […] and would require prior written consent from the Supervisory Board for a number of matters.

11. Contrary to the parties' opinion, the Commission has found that the Grand Alliance members cannot be seen as "captive customers" of Euromax. According to […] the Grand Alliance operating agreement [… *summary of relevant provision of agreement and Commission's analysis*][5],[6],[7]. According to the draft Shareholders' Agreement of Euromax [… *summary*]. This underlines that PONL's partners are not obliged to use the Euromax terminal and that their commercial relationship with Euromax will be on the basis of normal commercial conditions.

12. The Management Board of Euromax Beheer B.V. has the task of the management of the business and the administration and representation of that company[8]. The areas which require prior written consent of the Supervisory Board do not put into question the managerial autonomy[9]. Euromax Beheer B.V. directs and controls the day-to-day business of Euromax Terminal C.V.[10] Consequently, the Supervisory Board of Euromax Beheer B.V. will not have any direct influence with regard to Euromax' commercial relationship with its customers. It will be the task of the management of Euromax to attract PONL's partners as well as third parties and to negotiate their rates.

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4 According to […] the draft Shareholders' Agreement, [… *summary*]

5 […]

6 […] of the draft Shareholders' Agreement.

7 […] of the draft Shareholders' Agreement.

8 […] of the draft Shareholders' Agreement.

9 […] of the draft Shareholders' Agreement, in particular […]

10 […]

13. Consequently, PONL's partners are not captive customers and Euromax' management has sufficient autonomy in the day-to-day business. Thus, Euromax is a full-function joint venture in the sense of Article 3(2) of the Merger Regulation.

IV. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion[11] (Hutchison: EUR 15,120 million, PONL: EUR 4,871 million). Each of Hutchison and PONL have a Community-wide turnover in excess of EUR 250 million (Hutchison: EUR […] million, PONL: EUR […] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

Container terminal services

15. In line with previous merger decisions[12], the notifying parties submit that the relevant product markets where Hutchison is active is the market for stevedoring services for deep-sea container ships, broken down by traffic flows to hinterland traffic (= direct deep-sea) and transhipment traffic (= relay/feeder). This market definition was confirmed by the market test.

Containerised liner shipping

16. The notifying parties argue that a vertically related market where PONL is active is, according to previous merger decisions, the market for containerised liner shipping services on one or more trades[13]. As to the frequency, it can be distinguished from non-liner shipping (charter, tramp, specialised transport), as to the mode of transport from non-containerised transport (bulk, reefer, vessel)[14]. This market definition has also been confirmed by the market investigation.

B. Relevant geographic markets

Container terminal services to hinterland traffic

17. According to previous merger decisions, the geographical dimension of stevedoring services for hinterland traffic extends to UK/Ireland on the one hand, and the Northern

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11 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

12 JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT.

13 M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand.

14 The recent decision M.3379 - PO/Royal Nedlloyd observed that on certain trades containerised liner shipping services are also competing with conventional reefer vessel services for the carriage of refrigerated cargo, however the market definition was ultimately left open[14].

Continental ports on the other hand[15]. It was left open whether the catchment area of the Northern Continental ports might be further broken down. The widest realistic range would be Hamburg (including Gothenburg) – Le Havre. This range was supported by most terminal operators in the market test. A narrower range might be Hamburg (excluding Gothenburg) – Antwerp. This range was suggested by the shipping lines in the market test.

18. A port authority has put forward that there is an even narrower geographic market limited to the three ports of Rotterdam, Antwerp and Amsterdam. Only these ports would be able to serve hinterland traffic via the Rhine efficiently. However, the access to the Rhine is not crucial for container traffic, because containers can be transported by rail or road as well. Rotterdam and Antwerp might be particularly close substitutes in the catchment area of the Netherlands and Belgium, but for the wider catchment area of Germany and some Eastern European countries they are competing with the ports of Bremerhaven and Hamburg. According to information provided by the parties, substantial hinterland traffic flows of the ports of Antwerp and Rotterdam go to Germany. In 2003, Rotterdam handled about 25% of the German hinterland traffic from Northern European ports, Antwerp about 15%, Bremerhaven about 18% and Hamburg about 40%. Antwerp handled about 22% of the hinterland traffic flows to France and thereby overlaps with Le Havre and Dunkirk which handle about 65% of the French hinterland traffic flow. PONL's hinterland traffic flows from January to June 2004 illustrate as well substantial overlaps between Antwerp/Rotterdam and Bremerhaven/Hamburg for the German hinterland on the one hand (Antwerp/Rotterdam about [30-50]% of PONL's German hinterland traffic from Northern European ports[16]) and between Antwerp/Rotterdam and Le Havre/Dunkirk for the French hinterland on the other hand (Antwerp/Rotterdam about [40-60]% of PONL's French hinterland traffic from Northern European ports).

19. As the ports of Antwerp and Rotterdam are competing with the ports of Bremerhaven and Hamburg for the German hinterland with its high volumes, the conditions for competition in the port range Hamburg-Antwerp are sufficiently homogenous to assume a single geographic market. Ocean carriers do not provide information to ECT as regards the origin or destination of containers. Furthermore, such information is only to a limited extent retraceable by ECT, in particular for containers moved inland by road. Therefore, ECT has only some overall views on its hinterland traffic on the basis of market surveys. Hence, ECT generally makes no distinction in its charges to deep-sea customers with respect to the origin or destination of the container in the European hinterland. Consequently, competitive constraints from the German hinterland traffic which influence ECT's pricing will also affect the nearer hinterland traffic to Belgium and the Netherlands. The same reasoning might apply in relation to competition with Le Havre for the French hinterland, even though the traffic volumes from Antwerp and Rotterdam to France are less substantial than those to Germany. However, it can be left open whether the relevant geographic market extends to the range Hamburg-Antwerp or to the range Hamburg-Le Havre, because the investigation

[15] JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT; M.1651 – Maersk/Sealand; M.2422 – Hapag-Lloyd/HHLA.

[16] The modal split of PONL cargo to Germany through Rotterdam is less than [0-20]% for barge, [50-70]% for road and [20-40]% for rail, through Antwerp [0-20]% for barge, [70-90]% for road and [0-20]% for rail.

of the Commission has shown that even on the basis of the narrower market definition, the operation will not significantly impede effective competition.

Container terminal services to transhipment traffic

20. The geographical dimension of stevedoring services for transhipment traffic extends to Northern Europe, i.e. all deep-sea ports in the Le Havre – Gothenburg range including the ports in the UK and Ireland[17]. This was confirmed by the market test.

Containerised liner shipping

21. The narrowest possible geographical dimension of containerised liner shipping services consists of single trades from Northern Europe to other non European areas and vice versa[18]. Some shipping lines have replied in the market investigation that Northern European ports and Mediterranean ports should not be distinguished. The exact definition of the geographic market can be left open because the investigation of the Commission has shown that even on the basis of the narrower market definition, the operation will not significantly impede effective competition.

C. Horizontal effects on the market for container terminal services

22. Euromax is a co-operation between ECT and PONL which will add capacity in Rotterdam from 2008 onwards. There is no overlap between the activities of Hutchison and PONL because PONL does not operate or control port terminals in Northern Europe.

<u>Market shares and current market situation</u>

23. The parties indicate their market share in 2003 in terms of <u>throughput</u> and adjusted by excluding captive volume[19] is as follows:

Terminal operator	Ports	Throughput in % for transhipment	Throughput in % for hinterland
Hutchison/ECT[20]	Felixstowe, Thamesport, Rotterdam	[20-30]	[20-30]
Eurogate	Bremerhaven, Hamburg	[20-30]	[20-30]
HHLA	Hamburg	[10-20]	[10-20]
Hesse-Noord Natie	Antwerp	[10-20]	[10-20]

17 JV.55 – Hutchison/RCPM/ECT and JV.56 – Hutchison/ECT.

18 M.831 – PO/Royal Nedlloyd; M.1651 – Maersk/Sealand.

19 A volume is captive when it is used by a shipping line which controls a terminal.

20 The numbers include the market share of the Hanno terminal in Rotterdam, which was acquired by ECT in May 2004.

Port Autonome Le Havre	Le Havre	[0-10]	[0-10]
APM Terminals (Maersk)	Rotterdam	[0-10]	[0-10]
P&O Ports	Southampton, Le Havre, Tilbury, Antwerp	[0-10]	[0-10]

24. The parties put forward that Hutchison's market share for transhipment and hinterland traffic had significantly declined between 1999 and 2003[21]. This would be due, generally, to the expansion of existing terminal facilities in Northern Europe and the development of liner owned facilities generating captive volumes[22]. In particular in transhipment the substantial decline would be the result of the loss of Maersk and Sealand volumes in Rotterdam, the additional loss of certain Mediterranean Shipping Company (MSC) transhipment traffic from Felixstowe to Antwerp, and the growth of transhipment traffic which has benefited ports such as Hamburg and Bremerhaven more than Hutchison. For hinterland traffic the decrease would be caused by the loss of Maersk and Sealand volumes to the APM terminal.

25. The market investigation has in general confirmed a decrease of Hutchison's market share, with some divergences for the transhipment and hinterland markets. For the transhipment market, the parties have indicated higher volume of throughput for competing terminals than the terminal operators in the market investigation. However, even on the basis of the results of the market investigation, the market share of Hutchison in Northern Europe was not more than [30-40]% in 2003. Important competitors are Eurogate [20-30]%, HHLA [10-20]%, Hesse-Nord Natie [10-20]% and the port of Le Havre [10-20]%.

26. Competitors have indicated higher volumes of throughput for their hinterland traffic than the volumes provided by the parties. Consequently the market share of Hutchison tends to be lower than according to the parties, with [20-30]% in the Hamburg-Le Havre range and [20-30]% in the Hamburg-Antwerp range (instead of [20-30]% on the basis of the numbers provided by the parties for the Hamburg-Antwerp range) in 2003.

27. The deep sea <u>capacity</u> share of Hutchison in Northern Europe of [20-30]% in 2003 which is indicated by the parties is in line with Hutchison's share in terms of throughput[23].

28. Therefore there are no elements which could point to an existing dominant position of Hutchison. It has been suggested that the port of Rotterdam would be the only one with unrestricted access for extra-large vessels with a capacity of 6000-8000 TEU or more and a draught of up to 14.5 metres. This would provide an advantage to its main

[21] According to the Commission decisions JV.55 and JV.56, the combined market share of Hutchison and ECT was in 1999 in terms of throughput for transhipment traffic [around 50]%

[22] In particular the APM terminals which belong to the A.P. Moller – Maersk Group.

[23] Statistics for capacity do not distinguish between transhipment and hinterland traffic.

terminal operator, i.e. Hutchison. However, according to the results of the market investigation, this does not impede access to and utilisation of terminals in other ports, even though some logistic planning might be necessary, such as timing of the passage to and from the terminal at high tide and planning of loops in a way that extra-large vessels do not fully loaded call river ports. In fact, all the main ports in Northern Europe are called by extra large vessels. Furthermore, some ports such as Hamburg and Antwerp plan dredging to improve the access to the terminals.

Impact of Euromax

29. The Euromax terminal will start its operation in 2008 with a capacity of […] million TEU which will rise to […] million in 2010. It will only then add market shares. Euromax will overlap with Hutchison's and ECT's terminals in Northern Europe for transhipment traffic and with ECT's terminals in the port of Rotterdam for hinterland traffic.

30. The parties expect a substantial increase of total capacity in Northern Europe and in the Hamburg – Le Havre range between 2004 and 2010[24]. They mention as examples for envisaged capacity expansion projects of Hesse-Nord Natie in Antwerp, of P&O Ports in Antwerp and London, of Eurogate in Bremerhaven, APM in Bremerhaven and HHLA in Hamburg. The expectation of a substantial increase of total capacity is supported by the market investigation. Major terminal operators have answered that they are planning an extension of existing terminals and/or the development of new terminals. Another source confirms the important dimension of the envisaged capacity extensions of Hutchison's competitors[25].

31. It is not possible to predict exactly to which extend the expected capacity will be utilised from 2007 onwards. On the basis of a demand analysis[26] the parties have estimated the utilisation rates of the terminals.

32. In particular, the parties expect Euromax and Hutchison (without Euromax) to have the following throughput, excluding captive elements[27], for transhipment and hinterland traffic[28]:

	2007 Tranship	2007 Hinterl	2008 Tranship	2008 Hinterl	2010 Tranship	2010 Hinterl
Market share Euromax in	0	0	[0-10]	[0-10]	[0-10]	[0-10]

24 The parties rely on a study done by Ocean Shipping Consultants in September 2004.

25 See Drewry Shipping Consultants, Annual Review of Global Container Terminal Operators – 2004, Table 4.5, North Europe – top ten terminal operating companies' expansion plans.

26 The parties rely on a study done by Ocean Shipping Consultants in September 2004.

27 I.e. the volume which is expected to be contracted by PONL.

28 For hinterland traffic under the assumption of the Hamburg-Le Havre range as the relevant geographic market. For the Hamburg-Antwerp range, the relevant market shares would be on the basis of the parties' estimates for Euromax [0-10]% (2008) and [0-10]% (2010) and for ECT (without Euromax) [30-40]% (2007), [20-30]% (2008) and [20-30]% (2010). If the results of the market test were taken as a basis, the market shares of Euromax and ECT might be expected to be slightly lower.

%						
Market share of Hutchison/ECT (without Euromax) in %	[20-30]	[20-30]	[20-30]	[20-30]	[20-30]	[10-20]

33. Estimation of market shares for 2007 onwards has necessarily a speculative element. However, against the background of the confirmed capacity expansions of all major competitors and the demand for extra capacity due to the increase of traffic mainly driven by a growing trade with the Far East, the estimations of the parties seem plausible. It can therefore be expected that the combined market share of Hutchison and Euromax from 2008 onwards will not be substantially higher than Hutchison's current market share and that Hutchison's major competitors will retain important market shares. This applies to transhipment traffic as well as to hinterland traffic. According to the market test, terminal operators do not expect an appreciable change of the ratio between transhipment and hinterland in the future[29].

34. Furthermore, Euromax creates new capacity[30], which will add on the basis of the assumed capacity utilisation a market share of [0-10]%. Its impact on the structure of the market will be limited. PONL is already customer of ECT in Rotterdam and will transfer its volumes to Euromax. PONL's alliance partners are already customers of ECT in Rotterdam and might transfer their volumes to Euromax as well. The competitive situation and the existing supplier/customer relationships in the port of Rotterdam will therefore not be substantially modified. Hutchison expands capacity in Rotterdam, but can only jointly control Euromax and [… *explanation of relation between PONL and Euromax*]. In the light of the above, the horizontal impact of Euromax does not significantly impede effective competition in the common market.

D. Vertical effects

35. PONL is active in the containerised liner shipping market, which is vertically related to the terminal services market where Hutchison and Euromax will be active. PONL is member of various conferences, consortia and alliances.

<u>Market situation on containerised liner shipping market</u>

Conferences

36. Liner shipping conferences are groups of vessel-operating carriers which operate under uniform or common ocean freight rates.[31] Conferences also engage in collective fixing

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[29] For hinterland traffic, even under the assumption of the narrowest plausible geographic market definition (Hamburg-Antwerp range) the combined market share of ECT and Euromax will not differ substantially from ECT's current market share, because all major terminal operators in the Hamburg-Antwerp range are envisaging important capacity expansions which can be expected to be utilised.

[30] Euromax' capacity in 2010 would be about [0-10]% of the current capacity in the Hamburg-Le Havre range and about [0-10]% of the current Northern European capacity. Taking the general capacity extensions during the next years into account, a lower capacity share can be expected for 2010.

[31] According to Article 1(3)(b) of Council Regulation (EEC) 4056/86 of 22 December 1986, OJ L 378, 31.12.1986, p. 4-13. Regulation 4056/86 is currently under review, i.e. the Commission considers

of terminal handling charges (THCs) that the conference members are charging shippers.[32] Where cargo is carried under conference tariff, THCs are added to the ocean tariff. There is usually a different THC per port within the geographic scope of the conference, i.e. carriers are differentiating THCs depending on the origin or destination of the cargo. However, within a given port, THCs charged by the conference members to shippers are invariably the same, regardless of the terminal used.[33]

37. Terminal operators, including ECT[34], are charging individual carriers, consortia or alliances THCs regardless of the origin or destination of the container. Terminal operators usually differentiate confidential charges between carriers, consortia or alliances, e.g. on the basis of volume rebates.

38. Since the pricing mechanisms for terminal charges between terminal operator and carriers on the one hand and carrier and shipper on the other differ from each other, i.e. confidential volume pricing versus geographical differentiation, the pass-on of terminal charges from carriers to shippers may become intransparent[35]. Moreover, the collective fixing of THCs by conferences does not provide any incentive to pass-on cost savings of terminal handling charges to shippers. According to the parties, conferences do not determine or have any influence over their members' choice of port calls. This is a matter of the individual line or consortia. Accordingly, no conference would be capable of taking a decision which had a bearing on Euromax. Likewise PONL is not able to influence a conference in favour of Euromax.[36] The market investigation confirms that conferences restrict competition between their members on the liner shipping market as regards ocean rates and terminal handling charges vis-à-vis shippers. It appears though that conferences do not restrict the carriers' choice of ports and/or terminals. As a consequence, the Commission does not consider that, for the

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proposing to the Council to repeal Regulation 4056/86, see page 9 of the White Paper on the review of Regulation 4056/86, applying the EC competition rules to maritime transport [COM(2004)675final].

32 In this way conference carriers are recovering from the shippers the costs of transferring containers from the terminal gate to onboard the ship and vice-versa that terminal operators are charging carriers, i.e. carriers are passing-on their terminal costs to the shipper. See page 3 of the submission of the European Liner Affairs Association (ELAA) dated 13 July 2004 to the Commission Consultation Paper on the Review of Council Regulation (EEC) 4056/86. In the Revised TACA decision of 14 November 2002 (OJ L 26 of 31.1.2003) the Commission stated that charges (or cargo-handling operations within a port) can fall under the scope of Regulation 4056/86 (liner conference block exemption) only to the extent that these operations are indivisible from the sea voyage.

33 On a number of trades conference members may depart from the official conference tariff by means of (confidential) individual service contracts with shippers. However as regards THCs, carriers […] and shippers normally agree that the THC to be included in the individual service contracts should be based on that in the relevant conference tariff.

34 See notification par. 118, 180 ff and ECT's answer dated 6.12.2004 to Commission questionnaire dated 30.11.2004.

35 Carriers may even be inclined to pass-on parts of variable cost elements charged by the terminal operators (such as storage charges or overtime charges that are charged by the terminals on an ad-hoc basis) or even the handling of empty containers to all shippers regardless of whether the individual shipper generated such costs to the carrier.

36 Page 1 of the PONL's answer dated 6.12.2004 to the Commission questionnaire dated 30.11.2004.

purpose of the assessment of the notified transaction, the market shares of the members of conferences in a given trade should be combined to those of PONL.[37]

Consortia and alliances

39. Consortia and alliances are operational forms of co-operation (not involving price fixing) between carriers on a trade-by-trade or global basis respectively which restrict competition between their members. Consortia and alliances have an impact on the choice of port calls and terminal operators. Hence, it is necessary to look at the competitive effects of consortia and alliances to which PONL belongs vis-à-vis competitors and terminal operators.

40. PONL accounts for a market share between [0-30]% by volume in 2003 on the trades below. The consortia and alliances, to which PONL is a member, account for market shares between [20-70]%[38].

Trade	**PONL**	**Consortium / Alliance**
Northern Europe – North America	[0-10]%	[30-40]%
Northern Europe – Far East	[0-10]%	[20-30]%
Northern Europe – South Africa	[10-20]%	[50-60]%
Northern Europe (incl. Southern Europe) – Caribbean	[10-20]%	[60-70]%
Northern Europe – Australia/New Zealand	[20-30]%	[50-60]% (incl. Southern Europe)
Northern Europe (incl. Southern Europe) - East Africa	[0-10]%	[40-50]%
Northern Europe (incl. Southern Europe) – India	[10-20]%	[20-30]%
Northern Europe (incl. Southern Europe) – East Coast South America	[0-10]%	[40-50]%

Impact of Euromax

37 The Commission will analyse within the review of Council Regulation 4056/86 possible anti-competitive effects of collective fixing of THCs within conferences.

38 As mentioned above consortia and alliances restrict competition between their members. However, consortia and alliances may benefit from a block exemption (Commission Regulation (EC) 823/2000) if their market shares are below 30%. On […] out of the eight above mentioned trades the market share of the respective consortium or the Grand Alliance is apparently above that market share threshold, and hence these co-operations are not exempted under the consortia block exemption. […]

41. PONL will have joint control over the Euromax joint-venture. However, shipping lines which are competing with PONL and its alliance partners will not be foreclosed from the access to relevant port terminal services as a result of the creation of Euromax. Euromax' market share will be below [0-10]%. Consequently, besides Euromax there is sufficient terminal capacity available[39]. Furthermore, the creation of Euromax will free capacities of the existing ECT terminals in Rotterdam, which will be offered on the market. Consequently, the operation will not significantly affect competition in the liner shipping market.

42. The position of PONL in the market of liner shipping is not strong enough to allow the parties to foreclose other terminal operators from their customer base. In global terms, PONL is the fourth largest carrier by operating capacity, which represents only 8% of the total operating capacity of the top 20 container lines[40]. PONL reaches its highest relevant market share in the Northern European- Australia/New Zealand trade, which does however not exceed [20-30]%. Even the combined shares of the consortia and alliances to which PONL belongs are not sufficiently high to foreclose other terminals from their customer base. The Grand Alliance volumes for hinterland and transhipment are estimated by the parties to represent no more than [10-20]% of the total Northern European throughput. There will be a number of other shipping lines outside the consortia and alliances to which PONL belongs which could use the competitors' terminals. Given that all major shipping lines are reacting to growing demand, it can be expected that PONL's market share as well as the market share of the consortia and alliances to which PONL belongs will from 2008 onwards not be substantially above the current market shares. In any case, even though PONL could exert a certain influence towards the Grand Alliance members to use the Euromax terminal, PONL's partners are not obliged to do so[41]. Furthermore, the capacity of Euromax will only allow to absorb less than [0-10]% of the demand for container terminal services in Northern Europe and therefore other terminal operators will not be excluded from the access to their customer base. Consequently, the operation will not lead to foreclosure effects in the container terminal service market.

VI. CONCLUSION

43. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission

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[39] See M.2422 – Hapag Lloyd/HHLA/HHLA-CTA, par. 16; see also M.831 – P&O/Royal Nedlloyd, par. 106.

[40] See page 19 of the Annex to the White Paper on the review of Regulation 4056/86, applying the EC competition rules to maritime transport [COM(2004)675final].

[41] See above,par. 11.

José Manuel Barroso (signed)
President of the Commission